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# “MODERN” FEATURES IN OLD ASSYRIAN TRADE\*

BY

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## *Abstract*

This contribution presents evidence for “modern” features in Old Assyrian trade (ca. 19th century B.C.), i.e. features not attested in earlier commercial records from ancient Mesopotamia or elsewhere and/or usually considered innovations of classical or early medieval times. It focuses on contractual and legal rules for long-term partnerships (a first step towards company law) and for coping with insolvent, absent or unwilling debtors. It also analyses the implications of bonds in the name of “the (anonymous) creditor,” occasionally designated as “the bearer of the bond,” the earliest evidence of and the first step towards the creation of commercial “bearer’s cheques.”

In his well-known book *History Begins at Sumer*,<sup>1)</sup> the American Sumerologist S.N. Kramer claimed Mesopotamian historical priority for a whole series of cultural features. His list includes schools, laws, libraries, medical and agricultural handbooks, but not trade. Nevertheless, trade and traders must have existed in Mesopotamia of old, because its early civilization could not have developed and flourished without essential materials such as metals, stones, and timber, which the alluvial floodplain of Tigris and Euphrates lacked. Already during the second half of the fourth millennium B.C., to quote a recent publication,<sup>2)</sup> “the highly integrated but resource-deficient societies of the Mesopotamian alluvium had succeeded in the institutionalization of a system of interaction with the resource-rich, but demonstrably less developed, highland communities. This was accomplished by the colonization of the neighbouring plains of southwestern Iran and by establishment of enclaves, stations, and outposts at carefully selected locations across the northern periphery.” Around the middle of the

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\* Abbreviations used for the standard editions of cuneiform texts are those listed in the CAD (see for this and a few additional ones the bibliography at the end of this article). Unpublished Old Assyrian texts excavated in Kültepe/Kanish and preserved in the Anatolian Civilizations Museum at Ankara bear the siglum *kt* (= Kültepe) followed by an indication of the year of the excavation (*a-z* for 1948-1972, thereafter abbreviated numbers of years, 73 etc.) and *k* (for *kārum*, the commercial quarter of the town). Those excavated in 1986 (*kt 86/k*) and in 1991 (*kt 91/k*, includes the archive of the trader Elamma) have been assigned to me for publication by the director of the excavation, Professor Tahsin Özgüç.

1) Kramer 1956.

2) Algaza 1992, p. 110.

third millennium B.C., two types of traders occur in early lists of professions (studied in the scribal schools) and around the same time we have the first written references to trade and trade goods both in royal inscriptions and in administrative records.

The subtitle of the first edition of Kramer's book, *Twenty-five Firsts in Man's Recorded History*, helps to explain the omission of trade: its existence and nature could not be easily documented by a sizeable "first" inscription, a scholarly text comparable to the Sumerian *The Farmer's Instructions*, or a set of historical records. Our knowledge of the, no doubt, vigorous Mesopotamian trade during the second half of the third millennium B.C. is indeed rather limited due to the size and nature of the written evidence. Apart from a number of usually short references in royal inscriptions and statements in a variety of literary texts,<sup>3)</sup> we have mainly administrative records, such as lists of goods traded (some with quantities and prices), records of delivery, debt-notes (recording loans extended or credit granted) and so-called balanced accounts of traders.<sup>4)</sup> These texts, partly administrative records with an institutional background and, partly, remnants of archives of a few traders, acquaint us with a great variety of articles of trade, with accounting terminology, procedure and ledger headings, and with prices (usually equivalencies in silver),<sup>5)</sup> but they tell us very little of the commercial operations and devices, both at home and abroad, with a caravan or a boat, let alone of the entrepreneurial mentality of these early traders, whose status is still a matter of scholarly dissensus.<sup>6)</sup>

This only becomes possible when we can draw on more substantial archives of traders, which include legal contracts, records of court cases, business correspondence and a variety of notes and memos. Such sources only become available in the beginning of the second millennium B.C., in the archives of Old Assyrian traders who were active between Assur and ancient Anatolia for at least 85 years (ca. 1920-1835 B.C., middle chronology) and established a commercial

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3) In myths, epical texts, disputations, royal hymns, historiographic compositions and even proverbs; see most recently Alster 1996 and for a recent attempt to use a literary text for the reconstruction of trade mechanisms, Zaccagnini 1993.

4) See for their edition and analysis Snell 1986.

5) See for the Old Akkadian Period (roughly 23rd century B.C.), Foster 1977 and in general, Algaza 1992, 2f., with literature. For the subsequent Ur III period (21st century B.C.), in addition to Snell 1986, also van de Mieroop 1986, Powell 1977, and Neumann 1992 and 1993.

6) The issue is whether or to what extent the traders (*damgar*) attested during the Ur III period were agents of the state or private entrepreneurs, who worked also (perhaps on a contractual basis) for the "state." See e.g. Neumann 1993, p. 86; Englund 1992, comments on text no. 1 (on p. 81 he speaks of "trade agents operating for the Ur III state" and states "No account known to me suggests any deviation from this state of affairs, that is, no accounts record the *private* activities of a *damgar*"), and Zettler 1992, p. 219 (on private local merchants in supplying the temple).

network of ca. thirty commercial settlements in Central Turkey. Their houses and archives were discovered in the commercial quarter (called *kārum* in Assyrian) in the lower town of the ancient city of Kanesh (ca. 20 kms. northeast of modern Kayseri), which proved to be their main colony and the administrative centre of their network. A source of tablets dug up by the local inhabitants since ca. 1890, identified in 1925, and excavated annually by Turkish archaeologists since 1948, the site has now yielded roughly twenty thousand cuneiform tablets, originating from at least seventy different archives. These sources (even though the majority of them is still unpublished) acquaint us with a large scale, well organized and rather sophisticated overland caravan trade, which imported into Anatolia great quantities of tin (essential for the Anatolian production of bronze) and fine woollen textiles to be exchanged or sold, both directly and indirectly, for silver and gold, which were shipped back to Assur.<sup>7)</sup>

This trade, as it is being reconstructed from the sources, reveals a number of remarkable features, some of which in my opinion can be qualified as “modern.” Before describing them some general comments on the use of the designation “modern” are appropriate.

“Modern” may be used retrospectively, on the basis of a comparison of Old Assyrian trade with what we know from earlier periods. In that case “modern” suggests that the setting, the entrepreneurial procedures and techniques, or the commercial mentality we encounter among the Old Assyrians traders are something new in the economic history of Mesopotamia and of the Ancient Near East at large. Such a claim is not easily proved. As pointed out above, Mesopotamian trade is old and there must have existed a centuries old experience with foreign trade in various directions (the Persian Gulf, Iran, Anatolia, Syria), using various means of transport (caravans and boats), various exchange mechanisms, and aimed at various materials or products. For lack of informative written sources most of the details of the early trading operations themselves remain unclear and the traders in most cases are little more than names, occasionally with a title, which occur in administrative records associated with a variety of goods, both as creditors and debtors. This means that we cannot exclude that some of the features presented here have earlier antecedents and we can at least observe that some of the terminology used by the Old Assyrian traders to administer or describe their transactions was not new. But at the same time their commercial jargon comprises many new words and expressions (both verbal and nominal).<sup>8)</sup> This may have been because the earlier Sumerian

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7) See for a short, general survey Veenhof 1995a and for more detailed information Garelli 1963 and Larsen 1976.

8) See Veenhof 1972 *passim*, Veenhof 1987, and Balkan 1967. This also explains the problems assyriologists in general have with Old Assyrian trade documents.

terminology (of the Ur III period) as we know it was primarily of an administrative nature (accounting and bookkeeping) and because no suitable Akkadian terminology had yet been developed. Whatever the reason, it must reflect more than linguistic creativity and have been rooted in the practice of the trade. The jargon and idiom of the traders were indispensable for describing their complicated commercial operations in business letters, judicial records and legal contracts.

And indeed, there were differences between the earlier trading activities, as far as we can recover them from the texts, and those of the Old Assyrians, due to a particular, rather different social framework, economic setting, and commercial goals.

The Assyrians, though they may have started that way, in the period covered by our sources, were not simply carrying out a "venture trade," that is traveling with their goods to foreign "central places" and markets where they stayed for a short period in order to exchange and sell their wares for what was needed at home, as Babylonians of roughly the same period did when they sailed to Bahrain (Dilmun), a central place in the Persian Gulf. They seem to have been the first to create a well organized network of commercial settlements abroad, in Anatolia, an area with a different ecology, culture and economy, hence in a different economic sphere. And their continuous and wide-spread presence in this target area created new possibilities, offered new challenges, and stimulated entrepreneurial creativity.

The articles which they traded were also rather specific. What they exported from Assur in the main had been imported there first: tin, presumably from Afghanistan by way of Elam, and expensive woollen textiles, the traditional, almost industrial product of Babylonia (supplemented by the output of a modest Assyrian home industry). Moreover, imports from Anatolia were no subsistence goods or basic materials needed in Assur, but great amounts of silver and some gold. Copper was not exported from Anatolia because its price there and the (in relation to its exchange value) prohibitive costs of transport (by donkey caravan) would have made this an utterly loss-making business.<sup>9)</sup> While the Anatolian gold, upon arrival in Assur did not enter the commercial circulation (there existed an Assyrian legal prohibition on selling or exchanging it in Mesopotamia and it may have been hoarded in Assur),<sup>10)</sup> silver was the universally accepted and the preferred means of exchange and payment in the Mesopo-

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9) See for copper, Dercksen 1996, esp. pp. 159f. As the words "in Anatolia" in his title imply, the Assyrian traders were very active in trading copper inside Anatolia, either because in certain areas and under certain conditions they could only sell their imports for copper, or because they tried to increase the amount or to reduce the price of the silver they were after by means of indirect exchange (tin/textiles > copper > silver).

10) See the observations in Veenhof 1995b, pp. 1733ff.

tamian trade. In Assur it was used for buying the merchandise to be exported to Anatolia, for the purchase of other necessities of life (from expensive houses to barley and wool), and for public spending by the "state" which derived income from the trade by taxation, by a kind of licensing, and probably also by acting as wholesale buyer and seller of the tin and textiles imported into Assur. The different economic sphere of Anatolia, with its different supply and demand situation, and hence a different system of equivalencies or rates of exchange, allowed the Assyrian traders (to put it simply) to acquire cheap silver there, which offered them excellent commercial possibilities in Assur. It gave rise to a trade not based on the procurement of subsistence goods or the sale of native products, but on purely commercial exchange resulting in "profit" by acquiring much more silver than originally invested, hence a much more "monetarian" economy than anywhere else in the ancient Near East.<sup>11)</sup>

Finally we should mention that the political institutions of the city of Assur were rather different from those prevailing in the cities of Southern Mesopotamia.<sup>12)</sup> It is rather likely that this was also due to its character of a strategically located (at a crossing of the Tigris) "central place," linking trade routes between south (Babylonia) and north (Anatolia), and east (Elam, the Zagros area) and West (the lower Jezira and Northern Mesopotamia between Tigris and Euphrates), a role which perhaps may be connected with its importance as an old regional cultic centre. Anyhow, its merchant class was well developed, politically influential and rich, and the trade, checked and taxed but also stimulated by "the state" (with its administrative organs the "City-Assembly" and the "City-Office"), was basically a private enterprise, carried out by family firms in which other citizens (including the ruler of the City) and the temples did invest. The only Babylonian city whose political and social fabric was somewhat comparable to that of Assur probably was Sippar in northern Babylonia, also an ancient cultic centre and important trading city on the Euphrates (groups of traders from Sippar, designated as "*kārum* of Sippar," had settled in at least two cities along the middle Euphrates, i.a. in Mari). Its commercial quarter or trading community (*kārum*) also played a role in the civic administration, while in the oaths sworn there not only the local gods and the king but also "the City" was invoked. In Sippar, however, the commercial activities of the members of the *kārum* seem to have been more closely linked with the economic needs and interests of "the state" (the texts speak of "the palace"), which was an impor-

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11) The rather "monetary" role played by silver in the Old Assyrian trade, indeed also a "modern feature," explains why in a recent general analysis of "money" in ancient Mesopotamia (Renger 1995) the Old Assyrian state of affairs is either ignored or labeled as an atypical case.

12) See for these institutions the analysis in Larsen 1976.

tant supplier of capital and for whom the traders worked in a contractual relationship, a situation not attested for Assur.<sup>13)</sup> But we must not overlook the fact that traders from Sippar were also involved in private commercial activities, using both their own capital and investments by others. Moreover, because of Assur's different ecology and social structure, the Assyrian "state" does not seem to have been a large scale owner or producer of goods (agricultural or other). And if the presumed role of the "City-Office" as wholesale buyer and seller of imported goods and hence as supplier of the caravans leaving for Anatolia proves to be correct,<sup>14)</sup> the role of the "state" in Sippar and Assur, notwithstanding other differences, shows some structural similarity.

Entrepreneurial skills and private initiative are even more observable in the Assyrian trading communities in Anatolia, which functioned within a framework of "colonial" self government (with rotation of administrative duties among its main members), as a kind of chamber of commerce, which served and balanced both collective and individual economic and legal interests. It also sustained, ultimately backed by the City of Assur, the highest political and legal authority, the political and economic relations with the local Anatolian rulers and cities-states, formalized in "sworn oaths" or trading treaties, with stipulated mutual rights and obligations. The fabric of the colonial community which, in addition to these official bodies, consisted of a network of private friendships, partnerships, representations and agencies, based on family relations and business contacts, spread out over many cities and towns, was important for the trade. The availability of good information on the markets, of efficient means of communication and transportation, of regional settlements with storage and living facilities, of relatives, employees or representatives "reliable as oneself" (for locally promoting a trader's interests and keeping in touch with native clients), and of administrative branches of the colonial government able to establish contacts with the local palaces, gave new dimensions to the commercial activities. It opened up possibilities inaccessible to traditional venture traders, even when they were regular visitors of central places or ports of trade.

It does not surprise that these specific conditions, developed over a period of a little less than hundred years (of which the last fifty are best documented), gave rise to particular commercial techniques, procedures, and attitudes, meant

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13) See for the *kārum* (in particular that of Sippar) and the trade, Kraus 1979 and 1982.

14) This role still is in need of proof. Arguments which can be adduced are the fact that the "City-office" occasionally figures as supplier of merchandise and, in particular, that various traders owe large amounts of silver to this institution (which, if they do not pay, has the power to empty our or seal and sell their houses). These amounts are too big to be explained as unpaid export duty (rate 1/120) or licensing fee, and the only reasonable alternative seems to be debts for merchandise bought on credit.

to improve, guarantee and facilitate the success of the trade, its turnover, safety and profits. This was in the interest of both the active traders (and their families), the City, and those Assyrians which had interests in it (as money-lenders or investors) or depended on it for their work (caravan personnel, those who supplied whatever the caravans and the families of the traders needed and bought, scribes and clerks working for the authorities or private firms, etc.).

“Modern” may also imply comparison with what was current in (much) later times. This would mean that some aspects of the Old Assyrian trade, features in the organization, the commercial and financial procedures, the legal instruments, and even the mentality may be identified as (early) precursors of later trading phenomena. This approach was already applied by Larsen in his analysis of the organization of the trade.<sup>15)</sup> He made the comparison with early medieval trade in the Mediterranean area, drawing both on the so-called “Geniza material” (from the 10th-13th centuries A.D.) as reconstructed by S.D. Goitein,<sup>16)</sup> and on the evidence from Italian trading cities such as Genoa, Venice and Florence, with their “great houses.” His discussion of such features as overland versus maritime trade, the importance of agencies and representatives abroad, the role and make-up of family firms, the patterns of investment and partnership, and the importance of record-keeping and accounting, reveals some remarkable similarities. They show that a comparison over a distance of three thousand years is legitimate and rewarding and that the Old Assyrian system, with its combination of family firms, long-term partnerships and *commenda* type contracts shares institutional and legal features with early medieval trade. Without denying that many vital legal and structural features are due to early medieval Mediterranean trade, it is a simplification to assert that of the various types of commercial contracts known “only a few contracts are clearly related to Greco-Roman ones. The others are almost certainly medieval innovations.”<sup>17)</sup> Ancient Mesopotamia and in particular the Old Assyrian traders too deserve credit as commercial innovators.

Various features of Old Assyrian trade could be assessed for their “modernity.” The administrative organization of the community of traders, the *kārum*, certainly arouses interest, notably its “bicameral system” with its distinction between “big” and “small” members and its rules for decision making (consultation in smaller groups, the plenary assembly being divided into seven groups), but I may refer the reader to Larsen’s lucid analysis which in the main still stands.<sup>18)</sup> Equally interesting is the system of depositing, transferring and ac-

15) Larsen 1976, pp. 92ff.

16) Goitein 1967, esp. chapters III and IV, and Goitein 1964.

17) Lopez 1976, p. 73.

18) Larsen 1976, part 3, ch. 3 “The Government of a Colony.”



counting goods and silver in the "*kārum*-office," in commercial contacts both with the Anatolian palaces and with the Assyrian traders, but it is still imperfectly understood. In what follows I will therefore focus, as evidence of "modernity," on legislative and contractual features, on procedures for payments in connection with investments, credit granted or debts contracted, which are conditioned by the organization of the business and reveal the essential role of silver and of written documents in Old Assyrian trade.

### 1. *Contractual and legal features*

Old Assyrian trade, operating on the basis of a variety of contractual relations between various, at times simultaneous participants, in partly different roles—investor, money-lender, guarantor, trader, partner, representative, traveling agent, caravan leader, employee—would have been impossible without a set of legal rules defining their responsibilities, rights and obligations. We meet them in the clauses of a variety of contracts and they are frequently referred to in judicial records and business letters. They probably grew as the trade developed, starting from customary and elementary contractual rules in existence before, which dealt mainly with the relation between creditor and debtor and could easily be applied or adapted to define commercial relations between investor and trader, trader and agent (given goods in consignment), seller (trader) and buyer (in case of credit sales), trader and transporter (goods "entrusted" to him being considered special purpose deposits), etc. But the sophistication of the trade and its financial arrangements went further and more was needed, e.g. rules about responsibilities and compensation for losses (of a collective caravan), about surety and guaranty, and about the division of commercial profits, which distinguished between the actual trader (*tractator*) and the investor(s), whose rights and liability for risks were different. More complicated were also the legal rules for (long-term) partnerships and those for various forms of cooperation, in particular in collective enterprises, such as the one designated as *ellutum*, "company, joint caravan."<sup>19)</sup>

The older law collections of Mesopotamia,<sup>20)</sup> i.e. those preceding Hammurabi, do not contain rules on trade. Hammurabi's Laws (ca. 1760 B.C., middle chronology), after having treated the relation between creditor and debtor (the former designated as *tamkārum*, "merchant," because merchants

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19) I cannot discuss this last feature here, but mention that in my opinion such a "caravan," organized and led by one prominent trader, with contributions by many others and with proportional division of costs and profits, seems to have been a kind of single event counterpart of the long-term "*naruqu*-society," discussed below.

20) See Roth 1995.

apparently were the ones to extend loans and grant credit), deal with trade in §§ cc, 100-107 and 112, while also mentioning the overland trader in § 32 and 281, where he redeems a Babylonian (slave) abroad. They formulate rules about the division of profits or losses in a commercial partnership (*tappūtum*) and about the relation and settlement of accounts between a capitalist-trader and his travelling agent or *tractator* (*šamallûm*). Paragraph 102 deals with merchandise given as *tadmiqum*, a speculative trust which guarantees the return of the capital but profit only if the enterprise has success, and 112 with commercial consignment, stipulating the penalty for a fraudulent consignee. Most of these features are also known from Old Assyrian trade—notably partnerships, consignment and *tadmiqum*, the latter always rather small lots of merchandise—and in general the laws contain rather basic rules, commercial specifications of the relation between creditor and debtor. Most of those dealing with trader and agent try to ensure a correct settlement of accounts and stipulate the penalties for or risks of commercial failure (factual, negligence, *force majeure*). In fact, more rules can be found in contemporary Old Babylonian contracts, notably those of commercial partnership (*tappūtum*), which occur in many places (also in Old Babylonian Susa). Some record the setting up of a partnership, others its termination by means of a settlement of accounts, usually in a temple. They are the most developed legal instrument, already well before Hammurabi, with detailed clauses about repayment (time, issue of losses and claims still outstanding because the tractator himself has sold on credit) and the division of profits.<sup>21)</sup>

The hey-day of Old Assyrian trade preceded Hammurabi by more than a century and the oldest Babylonian partnership contracts are from the second or third quarter of the 19th century B.C., roughly contemporary with the last two generations of Old Assyrian traders from level II of *kārum* Kanesh.<sup>22)</sup> This implies (but earlier Sumerian or Babylonian contracts of course may still turn up) a chronological priority for comparable Assyrian contractual rules. Moreover, several Assyrian contracts and clauses envisage more complex legal situ-

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21) They reveal that private partnerships between two or three persons, one of which usually is the capitalist-investor while the other is the travelling trader (called *šamallûm*), were rather common, probably because they offered traders the possibility of increasing their capital and rich citizens an additional source of income beyond agricultural investment (where similar partnerships, between the owner of a field and one or two tenants, are well attested). These partnerships have been studied in the past by Eilers 1926, Oppenheim 1954 (esp. pp. 8-10), and Dole 1965, which, unfortunately is still unpublished. The whole subject, also because of the increase of the sources, is in need of a fresh investigation.

22) A record from the time of king Enlilbani of Isin (Edzard 1976) and a contract from Ilip (archives of Šissunawrat) from the reign of king Sumulael of Babylon (Dalley 1987, no. 30).

ations and define commercial relations which thus far are only attested among the Assyrians. In addition, we now have evidence of Old Assyrian legislative activity in response to demands of the trade of a kind unattested in Babylonia.

The best example of a sophisticated contract is that governing the so-called "*naruqqum* society," *naruqqum* being the "money-bag" into which investors "pour" (*šapākum*) capital which is put at the disposal of a trader. The substantial investments by a dozen or so people always consist of (better: are rated in) amounts of gold (cases of 15 and 14 kilograms in all are attested), which are entrusted to a trader for many years (9, 10 and 12 years occur), in order "to trade" (*makārum*).<sup>23)</sup> These contracts, which occur already during the first generation of Old Assyrian traders, also contain stipulations on the eventual division of the profits and on premature withdrawal of the capital by a "shareholder." Moreover, as discovered by Larsen, the investments actually made in silver were "inscribed in the *naruqqu*-tablet" in gold at twice the normal rate of exchange, so that a 100% profit was guaranteed from the outset. From letters and judicial records we learn that more rules obtained than spelled out in the contract, bearing of interim "dividends," the possibility of conversion of debts into shares, and the negotiability of shares which also could be inherited. These rules reveal that Old Assyrian traders took the first steps toward the formulation of a kind of "company law," which is important in the light of the general conviction that such legal instruments were only developed in the Middle Ages.<sup>24)</sup> This type of investment contract also indicates that one cannot attribute to the Assyrians "the failure to take steps to overcome the limits of individual cash resources," which would have hampered the commercial revolution in the classical world.<sup>25)</sup>

While Old Babylonian commercial partnerships usually were of limited duration, frequently investments for one single journey (payment had to take place "at the completion of the journey,"<sup>26)</sup> Old Assyrian knew also long term partnerships, as is clear from the frequent designation of traders as "the partner of PN."<sup>27)</sup> Unfortunately, we do not possess a single Old Assyrian individual

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23) I can limit myself here to the essentials and refer to the analysis in Larsen 1977 pp. 119-146. In the single published contract (Larsen 1977, p. 16) the broken first line (collated) contains the word *šipkātum*, the technical term for "investment."

24) See the observation and references in Renger 1994, p. 173 with note 40.

25) According to Finley 1983, 185. The existence of larger, collective funds on which participating merchants could draw has been claimed for the Old Akkadian and the Ur III periods by Foster 1977 and Van de Mieroop 1986, but in some cases the private nature of these funds is doubtful and traders may have used capital made available by "the state."

26) See Larsen 1976, p. 94 and Hallo 1965, p. 199.

27) Some Old Assyrian partnerships were of limited duration and had a particular commercial goal, such as the partnership founded according to ICK 1 no. 1 (to be connected with BIN 6, 181), between four traders in order to acquire meteoric iron.

long-term partnership contract,<sup>28)</sup> but we have a judicial record (ATHE no. 24) where one is terminated, or at least the relevant accounts are settled between the heirs (including daughters) of the two partners (*tappū*). It shows that partners could represent each other in legal situations, ship special funds (*maš-kattum*, presumably protected against claims by third parties) to each other, collect each other's outstanding claims, and use each other's valid records (contracts and depositions).<sup>29)</sup>

Another new type of contract was used to hire a person as leader of a caravan by granting him an interest-free loan (usually about half a pound of silver). It enabled him to earn his own wages (if he invested it in the trade by converting it into a few woollen textiles which he shipped with the very caravan he was leading), a clever arrangement which secured his vital interest in the success of the enterprise. The contract, which uses the terminology familiar from antichretic pledging (the person hired "is held by the silver") stipulated a penalty for abandoning the job "in the middle of the journey" (by disappearing or entering someone else's service). In that case, in addition to returning the loan he had to pay the costs of hiring a substitute, costs which in some contracts were specified according to the distance still to be covered by the caravan ("one shekel of silver for each double hour.")<sup>30)</sup>

Evidence for legislative activity spurred by the demands of the trade was presented recently by the present writer.<sup>31)</sup> From references in official verdicts, judicial records and letters we know that the City-Assembly of Assur issued "rules" (*awātum*), several of which were inscribed on a stele, that is published and endowed with legal force, even though we still have no copy of these laws themselves. One rule stipulates the right of a guarantor who had to take out a loan to meet his obligation of paying for a defaulting debtor, to charge compound interest. Others deal with the procedures of settling debts and claims (resulting from investments and trusts) of a dead trader, and with compensation to be paid for losses suffered by traders taking part in a caravan led by one of them. These are no issues commonly treated in Mesopotamian laws and we have to assume that they (and others, still unknown to us) resulted from consultations and verdicts (hence precedents) of the City-Assembly in cases which

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28) It is possible that such contracts, just like the very rare *naruqu*-contracts were as a rule preserved in the city of Assur, whose Old Assyrian layers have not been excavated.

29) We cannot deny the existence of Old Babylonian partnerships of longer duration, which amounted to more than investing funds in a particular business trip. Some letters of traders imply more lasting forms of cooperation as do some judicial records dealing with the termination of a partnership (e.g. BE 6/1, 15, lines 14f. "henceforth each will make profit for his own purse").

30) See for these contracts Kienast 1989 and Veenhof 1994.

31) See Veenhof 1995b.

were frequent and important enough for fixing statutory rules. Their origin and subject matter, as well as the new types of contract mentioned before, allow a claim of "modernity," both against the background of what was common and traditional in ancient Mesopotamian law and evaluated in the light of legal rules to emerge in the Middle Ages.

## 2. *Debts, securities, and the circulation of silver*

The key role played by silver, acquired at a favorable rate of exchange in Anatolia and highly valued in Mesopotamia, explains various features of the trade. The desire to convert merchandise into silver and to ship it to Assur without delay pervades the trade and is a frequent item of business letters and judicial records. Because during the Anatolian winter traffic was impossible for on average four months and the journey between Assur and Kanesh took about six weeks, at the very best two caravan trips *vice versa* could be made each year. Since climate and travelling time were given, the bottleneck was the time needed to convert the goods imported into silver. Possibilities of cash sale apparently were limited and merchandise frequently had to be shipped on to other colonies in Anatolia, where at times only indirect sales (tin/textiles sold for copper which was sold again for silver) were possible. Silver had to be sent back to Assur before the winter to have the next caravan equipped and ready for departure in spring, as soon as "the roads were open." Coordination between the activities in Assur and Anatolia hence was vital and assured by means of letters sent by "special delivery" (*išti bātiqim*), that is separate from and faster than the heavily loaded caravans, which also took mail along. Members of family firms, partners, and representatives at both ends were informed in advance of merchandise or silver which was "on the way" and were asked to take measures for securing a quick sale (in Anatolia) or purchase (in Assur). Occasionally they were asked "to do a favour" by paying cash for tin or textiles (in Anatolia), to advance or borrow silver for a few weeks for making purchases (in Assur), "so that the merchandise is ready when the silver arrives," or to take out a short-term loan with a money-lender for that purpose. In Anatolia credit sales were rather common, e.g. to local palaces and officials (who would issue an acknowledgment of debt) or as part of collective operations undertaken by the *kārum*-office in which traders could take part by "depositing" merchandise.

Very common was the practice of entrusting merchandise in smaller lots (occasionally with the transport donkeys) to "traders" (also called *tamkārum*), who functioned as a kind of commission agents or travelling salesmen. They received the merchandise on consignment for which they signed (sealed) bonds in the form debt-notes, which stated their debt in silver and the date of payment

(the credit term could vary between a few weeks and at most one year)<sup>32)</sup> and imposed interest for exceeding it. Letters frequently speak about these agents, they ask to use only those who are reliable and rather grant longer credit than being confronted with unpleasant surprises, or they complain about agents which are late in paying and about “silver which is out of reach.”

This system had some important consequences:

- a) there were always many “outstanding claims” (*bābtum*) which traders tried to collect in time, while agents who exceeded their terms had to be summoned or sued for payment;
- b) each trader kept a large number of bonds and debt-notes as evidence of his claims, preserved in their clay envelopes (sealed by debtor and witnesses) in his “strongroom;”
- c) many judicial records (private summonses, depositions by witnesses and debtors, protocols of agreements, verdicts, etc.) deal with the collection of debts from people who were late, unable or unwilling to pay.

It does not seem surprising that in a society of travelling merchants, based in Assur and/or Anatolia, there was a need of procedures securing and facilitating the payment of debts, the dunning of bad debtors, and the making of arrangements with those who could not or would not pay. For that purpose the methods already common in Mesopotamia were used: providing pledges and guarantors and stipulating fines (notably default interest) for late payment. The commercial value of silver is reflected in the high rate of interest current among Assyrians, fixed at 30% per year by the traders (“according to the rule of the *kārum*”), a rate comparable to that for barley in Babylonia, where the interest on silver was only 20%. The Mesopotamian legal system allowed for summoning a debtor and for forcing him to remain available (“holding him by the hem of his garment”) or to present a “stand in” who would guarantee his presence at the time of payment or pay in his stead. Debtors in arrears or refusing to pay could be summoned and questioned in the presence of witnesses, whereby their reactions could be recorded in writing to serve as evidence for possible future legal action (if promises were not kept or solutions worked out failed). The Old Assyrian system also enabled the creditor to seek the help of the *kārum* authorities for a forced transfer of a debtor or vital witness staying elsewhere, on the condition that the creditor “took the responsibility,” i.e. had to prove his claim or else had to pay for the cost.<sup>33)</sup> The authorities, moreover, passed verdicts

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32) More in general, letters distinguish between cash sale, short term and long term credit. There are indications that the price in silver agreed upon was conditioned by the length of the credit term, hence the choice was between fast but risky, and slower but safer.

33) The procedure has been reconstructed by Larsen 1976, pp. 256ff.

which forced people to appear in court for questioning or negotiations and could even order the inspection of documents in a trader's archive (by a special, impartial commission).

Evidence of a liability, when needed, could be presented by witnesses or submitted in written form, in the first place the original bond, but also depositions, agreements, verdicts, etc. The vital role of written documents helps to explain the existence of the large archives and underscores the importance of writing and bookkeeping for the Old Assyrian trade. Of course, writing and bookkeeping were a much older Mesopotamian skill and the immediately preceding Ur III period (21st century B.C.) is rightly famous for its abundant bureaucratic recording and accounting. The Old Assyrian traders used these traditional techniques, but also adapted them to their needs as private entrepreneurs and traders abroad and to a situation in which the value and circulation of silver had become of vital importance. When the evidence, the bond sealed by the debtor (it was called "his tablet," since he had sealed it and it had to be returned to him upon payment), was not available, the creditor or his representative could approach the debtor with an (abbreviated) copy listing the basic facts (amount, date, rate of interest, witnesses) and we learn that such copies (*mehrum*) were actually made for that purpose, were sent overland, and that the information they contained could be forwarded by letter to a partner or agent asked to collect outstanding claims.<sup>34</sup>) Confronted with these facts the debtor would usually pay or accept a financial arrangement, knowing that such data, in themselves without legal force, would allow the creditor to start a legal action and summon the witnesses whose names had been listed. The witnesses on their part, having no doubt testified many comparable transactions over the time, must have been unable to remember the details of what was at stake (amount data, rate of interest, etc.) and had to rely on the written evidence supplied the creditor (original or copied) as the basis of their testimony. The creditor, unable to return to the debtor the original bond ("his tablet"), in turn would issue to him a written and sealed quittance ("tablet of satisfaction"), which in due time could be exchanged for the original bond, whereupon both could be simultaneously cancelled ("killed").

Problems could arise if the debtor refused to pay, for which he might have various reasons. He could have paid elsewhere, in a different way (by transfer of merchandise or in the framework of a settlement of accounts), or to a different person (a representative or partner of the creditor). He could also deny his liability on the basis of a legal decision, an earlier agreement, or due to the specific nature of his debt (conditional, joint liability, etc.). Additional compli-

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34) See Veenhof 1985.

cations were possible if a guarantor had taken over his responsibilities which resulted in the transfer of the claim from the creditor to the guarantor. In such situations creditor and debtor could enter into a formal contract (*tarkistum*), agreeing that payments demanded and made or refused on the basis of invalid claims (without later confirmation by witnesses or documents) would be returned or paid double. As an example I quote the document TCL 21 no. 262, dealing with the purchase of a slave. "When S. brought the slave down from the market, G. and K. paid 12 pounds of copper as price of the slave. S. said: "I paid 3 pounds of copper as my share," but K said: "You did not pay anything as your share!" K. said: "If (it is proved that) you did not pay your share, will you not pay 12 shekels of silver for (instead of) the 6 shekels of silver?" <S. answered>: "I will pay it." Witnessed by T. The envelope of this document contains the seals of S. (who made the promise) and of the witness, followed by the words: "Contract (*tarkistum*) of S."<sup>35)</sup>

Such contracts by their heavy sanction prevented unfounded demands and refusals and could prevent delay of payment, hence stimulated the circulation of silver. They could build on a stipulation already attested in contracts of the preceding Ur III period, that debtors who failed to pay in time, at times after a summons followed by a promise, would pay double.<sup>36)</sup> The Old Assyrians adapted this traditional sanction, which in the Ur III period only used to protect the interests of the creditor, to solve disputed claims and turned it into a two-edged weapon, serving both the debtor and the creditor. A later attestation of this double use is found in Hammurabi's Laws, where the trading agent denying his liability has to pay three times (§ 106), but the creditor denying payment by the agent pays six times (§ 108), an example of Hammurabi's goal to balance justice with protection of the weaker party.<sup>37)</sup>

Problems with defaulting debtors which troubled many Assyrian traders were traditionally countered by stipulations in the contract about default interest, pledges or guarantors. While certainly of help, they might create complications and take time, without providing the creditor soon enough with the silver he needed. To meet such problems the Assyrian traders introduced an even more effective contractual device, which offered the creditor the possibility of fast and efficient self-help. In the acknowledgment of a debt one could insert the stipu-

35) See for such contracts also Veenhof 1991, p. 441 with footnote 13.

36) See Limet 1969 with Neumann 1992, pp. 171f., also on the requirement of proof.

37) I cannot go into details here, nor deal with the question whether the clause in particular cases did not imply a threefold payment, hence the original debt plus twice its amount as a fine. See the remarks of Limet (quoted in the preceding note) and the observations by Lewy 1960, pp. 39ff. on the word *šušalšum* used in this context, which must mean "three-fold." It occurs i.a. in *EL* no. 285:16 ("If A. does not produce witnesses against E., A. will pay threefold to E. for this silver"); see for more references *CAD* vol. 17/3, 378.



lation that "if the debtor does not pay in time, I (the creditor) will enter the house of a money-lender (*bēt tamkārim*) and take the silver (plus the interest on it) (at interest) for his (scil. the debtor's) account." Abbreviated versions of the formula (the words between brackets in the quote frequently are omitted) and some variation in wording occur. Some versions add at the end: "And so I will supplement the deficit," which suggests that this device was also used when only part of a debt was paid in time.<sup>38)</sup> Some versions instead of "to take (silver)" use "to call (for silver)" (*šasā'um*), which suggests a formal, public act, understandable when a loan is taken out for somebody else's account, which may have required the presentation of evidence and the presence of witnesses. The problem of the interest (due to the money-lender) was solved by making the creditor who took out the loan liable for it, while at the same time authorizing him to charge it to the debtor. Because the latter, since he had exceeded his term, already owed interest to the creditor, he would have to pay double. This is proved by a judicial record which states that the debtor had agreed that, if the promised payment of his debt by his representative did not take place, the creditor would be authorized to "borrow it at interest, at a rate of 3 shekels per mina per month, at a money-lender's."<sup>39)</sup> The rate of interest mentioned is twice the normal one current among the Assyrians, of 30% per year, "according to the rule of the *kārum*." This solution appears to be similar to the one available to guarantors, who had to take out a loan in order to be able to meet their obligation of paying for an insolvent debtor. When doing so they could be authorized by a verdict of the City-Assembly, on the basis of a law inscribed on a stele, to charge the debtor "interest on interest."<sup>40)</sup>

### 3. Anonymous creditors and "bearer's cheques"

Another interesting device, which may have facilitated the acquisition or transfer of silver when needed, was to write in a record that silver or merchandise belonged or was due not to a particular person, identified by name, but to *tamkārum*. The purpose and background of this practice and the meaning of

38) See for the interpretation Veenhof 1978, p. 306 note 29, and for examples *EL* nos. 87, 185 and 309; *ICK* 2 nos. 95 and 147:18ff. In *AKT* 1 no. 34 the clause implying partial payment reads *bēt tamkārim ana bitiqtim alaqqešumma bitiqtam šutma umalla*, "I will take (silver) at a money-lender's for the deficit and he (the debtor) will compensate the deficit." An example of a partial payment of a debt, supplemented by a loan taken out by the creditor at a money-lender's, is *EL* no. 254, where the permission to do so is given by the guarantors of the debtor, who had promised (the verb is *apālum*, in line 11) to pay for him.

39) *EL* no. 309:12-21. Here the authorization of loan uses the verb *laqā'um*, "to take (out)," but the description of the execution *šasā'um* "to call (for)."

40) In Assyrian *šibat šibtim*, see Veenhof 1995b, 1722ff.

*tamkārūm* have been repeatedly discussed, but there exists neither a full agreement nor a comprehensive analysis of the many uses and meanings of this term in Old Assyrian trade. The issue is not only why and how the term is used in particular contexts, but more generally whether the term, basically “trader, merchant,” is primarily functional or refers (also) to a person’s profession or status.<sup>41)</sup> Garelli, while admitting that a *tamkārūm* plays different roles in specific situations, qualified him as “not an ordinary trader,” but “une sorte d’intermédiaire agréé, chargé de faciliter les transactions.”<sup>42)</sup> Others doubt such a status,<sup>43)</sup> and prefer a functional interpretation, proposing translations/interpretations conditioned solely by the role a *tamkārūm* plays in a particular context: as head of the Anatolian branch of a firm, as the person actually travelling and trading, hence “*tractator*” or sales agent, as creditor, as money-lender (especially in the combination *bēt tamkārīm*, “house of a money-lender,” where one takes out loans), or as somebody who may raise a claim (in sale documents).<sup>44)</sup>

We can trace several situations in which a creditor or owner of silver or merchandise remained anonymous by being designated as *tamkārūm*.

– Investments in a “*naruqqu*-society” (see above) could be “registered to the name of *tamkārūm*” (*šumi tamkārīm lapit*). In the “*naruqqum* contract” of the trader Elamma (kt 91/k 482) this is the case with no less than four out of thirteen investors (good for more than a third of the capital of in all ca. 14 kilograms of gold).<sup>45)</sup>

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41) The word is also used in the meaning “trader (par excellence)” = “Assyrian, contrasted with *nu’āum*, “native Anatolian,” in the marriage contract kt n/k 1414:7ff., where a divorced Anatolian wife is allowed to marry “a native or a trader of her choice.” A similar contract, AKT 1 no. 77:7ff., instead has “either a native of an Assyrian” (DUMU Aššur). Compare the use of “Canaanite” (= Phoenician) for “trader,” “merchant” in the Hebrew Old Testament (Proverbs 31:24).

42) Garelli 1977, quote from p. 103.

43) It has been noted that not a single Old Assyrian trader or money-lender calls himself *tamkārūm* in the inscription on his seal, while many *tamkārū* of the Old Babylonian period did. Seal impression A on the OA text KKS 3b (= p. 164, fig. 7), with the inscription “Bala, son of Lani, *tamkārūm*,” is no exception; the person mentioned in the inscription does not occur in the text and the seal (in “Syro-Cappadocian” style) was used by a certain Šū-Anum, who must have acquired it.

44) See Larsen 1967, pp. 49ff. (with older literature), 180f. and Veenhof 1972, p. 352 note 467 and p. 356.

45) At times this (temporary?) anonymity had to be lifted, as happened in the statement recorded in kt a/k 494 witnessed by two persons: “The two pounds of gold (invested) in the ‘money bag’ (*naruqqum*) of P., which have been identified as (belonging to) *tamkārūm*, that gold belongs to A., A. is the *tamkārūm*.” Note also CCT 2, 47b:5ff.: “P. said: the 2 minas of gold which H. has invested with your father and which have been designated as (belonging to) *tamkārūm* and to which the investors are entitled, that gold belongs to our father and

– Silver sent to Assur or merchandise shipped to Anatolia, in the relevant transport contracts (which record that it was entrusted to somebody for transport) is frequently identified as "belonging to *tamkārum*" (see e.g. *EL* nos. 118, 139 and 140). And the same is true of silver or merchandise handed over in Anatolia or "left behind" with somebody (see e.g. *EL* no. 245), and of assets in other situations (legal fights, division of inheritance, goods in deposit, etc.).

– Credit granted or loans taken out frequently are designated in debt-notes as being "owed to *tamkārum*." One might be tempted to explain this as a consequence of a visit to "the house of a *tamkārum* ('money-lender') to take out a silver loan at interest," as described above (see note 38), but there is no proof that the relevant debt-notes used or had to identify the creditor simply as *tamkārum*. This designation of the creditor, as we know from letters too, occurs in all kind of loans and credits, also in those between partners and within one and the same firm, where no (professional) money-lender was involved.

Why would the *tamkārū* in question have preferred to remain anonymous? On the basis of the many occurrences various answers can be given. A first motive was to keep one's identity secret, not uncommon among traders who at times may have been each other's rivals and may not have wished to let it be known which shares they owned, which merchandise they had sent on the way, or more generally how their financial position was. A good example is found in the official letter BIN 6 no. 101,<sup>46)</sup> where it is stated that an employee who is transporting merchandise in Anatolia and for fiscal reasons is asked by local Assyrian authorities to reveal the name of its owner, "shall not mention the name of the *tamkārum*," if the latter as a prominent member of the *kārum* is paying his fee to the central authorities of *kārum* Kanish.<sup>47)</sup>

Anonymity may also have been a device to protect merchandise or silver entrusted to an agent or transporter. By stating that "it belongs to a *tamkārum*," hence that somebody was its legal owner or already had a valid claim on it ("his hand had been laid upon it"), other creditors were prevented from

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P." Note also KKS 25: "2 minas of gold which in the *naruqqum*-capital of I<sub>1</sub> have been booked on the name of *tamkārum* belong to I<sub>2</sub>," sealed by I<sub>1</sub> and two witnesses.

46) Edited and discussed in Veenhof 1972, p. 275 and Larsen 1976, p. 264.

47) From a new document, to be published by a Turkish colleague in the journal *Belleten*, it becomes clear that such persons, called "*dātum*-payers," can also be designated as "men with an account" (scil. in the *kārum*-office). This explains the occurrence of the latter in the so-called "Statute Texts" of the *kārum* organization, which thus far could not be properly understood (see the analysis of the meaning of *awilum ša nikkassī* in Larsen 1976, pp. 312ff.). The "rule of the City," quoted in the letter KTS 11:26ff. and discussed on p. 1736 of the article quoted in footnote 10, sheds additional light on the position of this category of prominent traders, which probably ranged among the "big men" of the *kārum*-organization.

claiming or confiscating it, as happened with silver and textiles on the way.<sup>48)</sup> This purpose is explicitly mentioned in the unpublished record kt 91/k 367 (archive of Elamma), where we read: “Four talents of wool (and) two black donkeys with their harness, belonging to *tamkārum*, which I entrusted to you in the presence of witnesses, declaring: ‘This merchandise belongs to *tamkārum*, it shall not be seized (by somebody else)!’” This also explains the occurrence of the words “belonging to *tamkārum*” in many transport contracts. It occurs in particular in situations where a partner or agent, already in debt, is granted a new silver loan by his creditor, frequently in Anatolia, in order to allow him to make a profitable caravan journey to Assur and back, in the hope that its yield and profit will allow him to pay off his old and new debt. In such situations the creditor took great care to make sure that a profitable purchase<sup>49)</sup> was made and that nobody would be able to seize either the silver or the merchandise bought with it. This happened by publicly (at times they add: “in the city gate”) “laying one’s hand on it” and stating that it belonged to a creditor (*tamkārum*).<sup>50)</sup>

*Tamkārum*, finally, was also used when ownership or claims were disputed or not clear due to complicated financial relations. A nice example is in the letter BIN 4, 21, where it is discussed who is the owner of an investment in a society. The trader Pushuken first said: “Register it to the name of Waqqurtum (his daughter),” but later: “Add it to my share!” The writers complied with this latter request, but then the trader in whose business the investment was to be made said: “Since you do not register it to the name of Waqqurtum, you shall (also) not add it to his (Pushuken’s) share!” The writers, after deliberation, then decided: “The two pounds of gold have been registered (as (belonging) to *tamkārum*.”<sup>51)</sup>

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48) Veenhof 1995b, pp. 1723f., a guarantor who has paid for a debtor, is authorized by an official verdict of the City of Assur to seize the latter’s assets “wherever silver of him is available.”

49) The Assyrian expression is “a purchase of (which assures) his life,” where “life” has to be understood as financial health, economic survival, hence profitable, see Veenhof 1987, pp. 56ff.

50) This probably was also the case with the credit or loan extended to a certain Kukulānum in the texts analysed in Larsen 1967 as “standard texts.” Enlil-bāni, who is the owner/creditor and keeps control of the whole operation, is at times mentioned by name (Larsen p. 8, lines 7, 13), at times designated as *tamkārum* (Larsen p. 12 line 35 and p. 180 line 5). Note also that Enlil-bāni’s actions probably were inspired by the fact that “he had been registered in the *bēt tamkārīm* as Kukulānum’s guarantor” and to all appearances had been obliged to pay for the latter. By this special loan he now tries to enable Kukulānum to earn enough money to pay him back.

51) See also the interesting record kt a/k 494, where we read: “As for the copper which A. gave to you and which he identified in the (accompanying) record as ‘belonging to *tamkārum*,’ A. is the *tamkārum*. Please, my brother, give him that copper!”

By far the most numerous occurrences of *tamkārum* are in debt-notes, as anonymous creditor. Whatever the reason for not mentioning the creditor by name, its effect and perhaps purpose seems to have been that the bond in question, which represents a claim, an asset, could be transferred, ceded to somebody else who would be able to collect the claim by submitting the bond. That this actually happened is clear from the quittance ICK 2 no. 103: "As for the 28 shekels of silver, the price of two donkeys, which I. gave to A. in the town of U., (whereby A. issued a debt-note) inscribed with *tamkārum* (as anonymous creditor)—I. is now satisfied with that silver. If *tamkārum* comes back on A. (for that silver), I. shall clear him." The acknowledgment of his debt, issued and sealed by A., which did not mention I. as his creditor but simply *tamkārum*, must have changed hands in the meantime. When A. paid back to I., his original creditor, the latter apparently was unable to give him back his bond. This entailed the risk of somebody turning up and demanding payment from A. by presenting himself as the *tamkārum* by submitting the bond in question. Should that happen, then I. has to protect and clear A. and this obligation is recorded in the quittance which A. now receives. Comparable texts may add a clause like: "The bond of the debt of A. which may turn up is invalid" (*sar*). The relative frequency of this clause shows that bonds might change hands. But its occurrence can also be explained (as we know from letters) from a situation where the debt was collected by a partner or representative of the creditor, while the latter lived elsewhere, where he kept the original bond in his safe. Since this bond could not be returned to the debtor upon payment a quittance had to be issued to him stating that this bond was now invalid (*sar*) and could be cancelled (lit. "die").

A case similar to that of ICK 2 no. 103 is recorded in *EL* no. 200, where a debtor owes 40 shekels of silver to A. according to a bond which mentions *tamkārum* as creditor. The record states that this silver has now been collected (from him) by M. and that if (the) *tamkārum* or A. turn to the debtor for this silver, M. shall "clear him." Obviously, the bond in question had changed hands and was in the possession of a third party, since neither the original creditor A., nor M. who had collected the payment, could return it to the debtor. Therefore a clause was inserted to protect the former debtor against claims by somebody else who might turn up and demand payment on the basis of the bond which he had somehow acquired.

Apparently, bonds with anonymous *tamkārum* as creditor could be ceded and this must have been very useful in a society of travelling traders and agents. The question what this cession of the bond implied has received two different answers. The first is that only *the right to collect the claim was transferred*. The person collecting the money, who "bears/brings the tablet" (*wābil ṭuppi* in Old

Assyrian, *nāši tuppim* in Old Babylonian), acts for the original creditor without himself having become the creditor. This is the opinion of the older specialists in cuneiform law, such as P. Koschaker and M. San Nicoló.<sup>52)</sup> The clause would not be a proper “Einhaberklausel,” hence would not link the title to the claim itself to the possession of the bond, but only cede “the right of collecting” (“Abholung durch einen Beauftragter”). The second possibility is that also, perhaps in specific cases, *the claim itself was transferred*, ceded, so that a person “bearing the tablet” had really become the creditor and as such could collect the asset for himself. This possibility was suggested by G. Boyer in his analysis of a record from Mari<sup>53)</sup> (see below) and supported by D.O. Edzard in his careful analysis of the Old Babylonian occurrences.<sup>54)</sup> He considers the possibility that the claim itself was transferred “plausible,” arguing i.a. from the absence of a stipulation on interest (interest due over a past period would create difficulties when a claim was ceded). He also pointed out that in the record Mari (the debt of half a pound of silver is due to a man who had ransomed the debtor in Karkamis!) the payment clause states that the debtor “on the basis of this tablet shall pay to whoever carries his bond in whatever *kārum* he may turn up.” Its linguistic form implies uncertainty about to whom and where the debtor might have to pay, apparently because the bond might have changed hands in the mean time.<sup>55)</sup> The Old Assyrian evidence presented above supports this conclusion.

To what extent such Old Assyrian bonds and their inherent claims were transferred is difficult to prove, since most occurrences are in the bonds themselves and we usually do not know what happened afterwards. How representative are the cases described above where we can show that bond and claim were ceded? Old Babylonian debt-notes never state that a debt is owed “to *tamkārum*,” but its possible cession is indicated by the stipulation that “the debtor shall pay to the person who bears his tablet.” In Old Assyrian, on the other hand, compared with the many debt-notes mentioning *tamkārum* as creditor, only a small number of contracts add a clause similar to that attested in Old Babylonian bonds, stating that “the bearer of the tablet is the creditor.” Thus far I have noted only eight examples<sup>56)</sup> and one with the variant “he who

52) Koschaker 1928, p. 42 with footnote 3 (commenting on its occurrence in Middle Assyrian records) and San Nicoló 1931, pp. 168f. But note that their conclusions were based on Old Babylonian and later occurrences, the Old Assyrian ones being unknown to them.

53) Boyer 1958, p. 236, in his comments on text no. 78.

54) Edzard 1970, pp. 69-74, Exkurs b: “Die sog. Inhaberklausel.”

55) ARM 8, 78:23ff.: *ana nāši tuppīšu ina kārim ša innammaru ša pī tuppim annīm itanappal*.

56) EL nos. 35:18f. (debt: 13 shekels of silver), 74:10f. (3 minas of silver), 224:35f. (1 mina of silver); OIP 27, 56:7 (3 minas of silver); UF 7 (1975) p. 315 no. 1:22-25 (1 talent

holds the tablet is the creditor,"<sup>57)</sup> always at the very end of a record, after in the opening section the creditor has been designated anonymously as *tamkārum*. When this clause is added there can be little doubt that a title or ownership can be transferred.

The purpose of such a clause has to be understood in the framework of the trade. It was not only used to transfer debts and settle of accounts, but could also serve the practical needs of the caravan trade, where merchandise or silver were sent from one place to the next and had to be entrusted to partners, agents and representatives, who had to be authorized to deal with it. A good example is contained in the record kt 91/k 195, the copy of a contract stating that two donkey loads of merchandise (tin and textiles), "with the seals of *tamkārum*, were entrusted (for transport) by the representative of the *tamkārum* to I., who will bring it to the town of W. or Š." There the goods shall be converted into silver by other representatives of the *tamkārum*, whereupon "they will send the silver (back?) to the respresentatives of the *tamkārum* (in Kanish?) and then this tablet (contract) will be cancelled (lit. 'will die')." After mentioning that the transport of goods and silver takes place in the name and at the cost of the *tamkārum*, the record ends with the words: "He who holds the (this) tablet is *tamkārum*." The *tamkarum* himself, the person who owns the merchandise (it is under his seal, so that nobody can touch it) or at least has a valid claim on it, is absent and the shipment and sale have to be carried out by his representatives in various towns. The clause ensures that those handling the merchandise and the silver, who are said to represent the *tamkārum*, have full power of disposition during the various phases of the trade. Without specific credentials identifying the representatives as such, this tablet passed along with the goods, serves as a kind of *ad hoc* legitimation, valid only for this specific operation but usable by different persons (representatives) who "hold" it, presumably because it was not foreseeable who exactly would carry out the operations described. As soon as the goal of the operation is achieved, that is the silver has arrived at its destination, the tablet has "to die," becomes invalid. An added purpose (as mentioned above) for stating that the goods/silver belong to *tamkārum* may have been to safeguard the goods against confiscation by somebody pretending to have a valid claim on the owner.

The question remains whether the addition of the phrase "the bearer of the tablet is the creditor/owner" was necessary in order to turn a bond into a kind of "bearer's cheque" or was only added to state unambiguously what was

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of refined copper), kt k/k 15:20f. (21 shekels of silver); kt n/k 897 (AMMY 1992, p. 57 no. 5): 17f. (15 shekels of silver); kt 91/k 203:16f. (1 mina of silver).

57) Kt 91/k 195:27f.: *mukil tuppim šut tamkārum*.

already implied by mentioning that the owner or creditor was *tamkārum*? It is difficult to answer this question, because the very small number of contracts with the “tablet bearer clause” seems to conflict with the numerous occurrences of *tamkārum* as creditor and owner. Perhaps the presence of the clause allowed a simple, straightforward cession or sale of a bond, while in other cases a transfer was conditional and embedded in existing commercial relations. I also note that where the “tablet bearer clause” is added, the amount of the (commercial) debt as a rule is small to modest, ranging from 3 minas (twice) to 15 shekels of silver, and once 1 talent of refined copper, worth ca. 1 mina of silver. Perhaps the sale or transfer of such bonds was more likely and practical. Anyhow, by inserting the clause in the bond, the debtor had been warned in advance that this might happen and by sealing it he had acknowledged this possibility.

In the Old Assyrian trading system bonds functioning as “bearer’s cheques” would have been very useful, but perhaps were not indispensable. Creditors could also authorize partners and representatives to collect their debts by means of a sealed letter and by putting copies or excerpts of the original bonds at their disposal.<sup>58)</sup> The *tamkārum*-clause would acquire added importance if it allowed the creditor to turn such a bond into an asset, to be handed over or balanced at the periodic settlements of accounts organized by the *kārum*, or even to be exchanged or sold for cash. In that way it would have made it possible to obtain silver, e.g. in exchange for outstanding claims (*bābtum*) which were not yet due, or even to recover silver from bad debtors. We know that a trader could submit or handover a bond as an asset in a settlement of accounts, could deposit it with or pledge it to a creditor of his (who ultimately might be able to collect and keep the silver), and that at times bonds were confiscated or divided as part of an inheritance. But I hesitate to assume that he could simply and generally (perhaps unless they contained the explicit statement that “the bearer of the tablet is *tamkārum*”) transfer or sell them as a bearer’s cheques, with the possibility of the debtor discovering to his surprise that somebody else had acquired a claim on him. I would rather assume that the relation between creditor and debtor required this not to happen without the knowledge of the latter, and that such transfers usually took place between traders who were business relations (partners, agents, investors), relatives or shared agents and debtors. This agrees with conclusions on the function of such “obligations payable to bearer” (in German “Inhaber-Schuldschein”) in medieval trade. M. North, describing how it would have worked between an English exporter of wool, a Flemish merchant who paid for it by means of an “obligation payable to bearer,” and an English

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58) Veenhof 1985, pp. 14f.



importer visiting Antwerp, concludes: “Dieses Verfahren der Weitergabe von Schuldscheinen funktionierte aber nur, solange es sich in einem überschaubaren Kreis miteinander bekannter Kaufleute abspielte, die auch die Kreditwürdigkeit ihres Geschäftspartners einschätzen konnten. Als aber die Kreditinstrumente frei zu zirkulieren begannen und damit derjenige, der den Schuldschein dem Aussteller präsentierte, nur der letzte in einer langen Kette von Gläubigern war, die den Schuldschein in Zahlung genommen hatten, bedurfte es gesetzlicher Regelungen zur Rechtssicherung des Kreditverkehrs.”<sup>59)</sup> This must have been even more true in the Old Assyrian commercial society, where we cannot assume a free circulation of obligations payable to bearer.

As an example I mention the facts described in the letter *AKT* 3 no. 104, written by (the creditor) Š. and dealing with a debt of 2 minas of silver owed to him by S. The latter apparently had handed over to his creditor Š, in a sealed envelope or bag, a bond recording a debt of (also) 2 minas of silver which S.’s brother I. owed to *tamkārum*, a tablet which was subsequently deposited (by Š.) in a sealed container in the house of another trader. Since, writes Š., S. has now paid his debt to me, the addressees of the letter are asked to take I.’s bond out of the container and to hand it back to S. Apparently, S. had been able to dispose of a bond recording a debt of his brother owed to “the creditor” (*tamkārum*), which he gave to his creditor as security or pledge and which he eventually gets back. It is very likely, since the debts of both brothers are identical, that I.’s bond had been drawn up deliberately for the purpose of temporarily satisfying his brother’s creditor by handing it over to him as pledge. Since it was made out to “the (anonymous) creditor,” Š., if S. failed to pay him, ultimately might have kept and converted it in order to get his silver back. Note, however, that I.’s bond was not simply given to S.’s creditor, but was first put under seal in a case or bag<sup>60)</sup> and deposited elsewhere, so that it was only accessible to Š. with S.’s cooperation. For our purpose we note that the pledged bond, recording a debt to “the creditor,” functioned in a specific context, was made available by a man to his brother to serve as a security for the latter’s debt. It by no means became a simple “bearer’s cheque,” but eventually could have become his creditor’s property and be converted into cash.

The *tamkārum*-clause may have had an important administrative function. By means of it investment shares (which were negotiable), titles to amounts of silver or merchandise, and other assets could more easily be transferred or balanced between partners, members of one firm, and relatives. This would link

59) North 1994, p. 89 (reference G.J. Dercksen).

60) This must be the meaning of the rare expressions *qa’iṣ* in line 12, also attested in CCTMMA no. 84:47.

up with the important role played by administrative accounting in the *kārum*-office, where members had their “contos” (lit. “hands” or “shares”), where they could make deposits (“to lay down silver/goods”), book transfers (“to bring an item to the ‘hand’ of somebody else”), and could balance credits and debits (“to add to or deduct from somebody’s ‘hand’”; *napālum*, “to balance”). A better understanding of these procedures probably will shed more light on the role played by the *tamkārum*-clause. I do not assert that actual transfers by means of bonds used as obligations payable to bearer did not occur, but they may have been less frequent and less important. One notes that a large number of the “simple” bonds with the *tamkārum*-clause, like those with the “tablet bearer clause,” deal with relatively small debts. One could understand that such claims were more easily transferred, also to simplify accounting. During the fairly long period of the Old Assyrian trade, moreover, developments must have taken place, whereby administrative and financial techniques were improved and adapted. In the course of time a promising device such as the use of the “*tamkārum*-clause” and the “tablet bearer clause” may have been exploited to suit even better the needs of an overland trade in which time, distance and credit were vital issues.

The Old Babylonian occurrences of the “tablet bearer clause” start rather late, the earliest examples being from the 18th century B.C., more than a century later than among the Assyrians.<sup>61</sup>) In the Babylonian records, as mentioned above, the creditor is always mentioned by name (even gods occur, if the temple extends a loan) and *tamkārum* is not used. As the table of Edzard<sup>62</sup>) shows, several categories of loan or credit transactions may be distinguished. Many are small, presumably consumptive loans, frequently payable at harvest time, both from private money-lenders and temples, others have a commercial or institutional background. That the “tablet bearer clause” occurs in an “institutional” context, in debts to the temple and especially the palace, which advanced capital to traders or had some other claim on the debtor, is understandable. They should be payable at the stipulated time (or “when the palace asked for it”) to various members of the administration entitled to collect the debts (and to return to the debtor his bond). Many late Old Babylonian records deal with traders who had received wool from the palace for which, in due time, they had to pay silver “to the bearer of their tablet.” A few times, however, the clause is missing and we read that payment had to be made “to the envoy of the palace”

61) See for the Old Babylonian evidence, besides Edzard 1970, the observations by Skaist 1994, pp. 191f., more focused on its legal than on its commercial implications.

62) See Edzard 1970, pp. 69f., table 4, with nearly 40 occurrences. Many additions are now possible from texts published since 1970.

instead, hence a named representative of the institution,<sup>63</sup>) who had been given the bond. Similarly, in VS 22 no. 40, where silver is given by an authorized official to a trader for making a business trip along the Euphrates, payment has to be made at the return of the caravan to a named scribe, while similar records (VS 22 nos. 35, 40, and 41) prescribe payment to "the bearer of his tablet." Both clauses are explainable in an institutional environment where different officials need authorization to act as creditor (*tamkārum*), that is to collect debts due to the institution they represented.

In Old Babylonian records such as BE 6/1, 85 (advance of silver for the purchase of barley), CT 47, 72 (consignment of silver), VAS 9, 182 (a partnership contract) and Arnaud BBVOT 1, 135 (advance of silver(?) for the purchase of stones), the "tablet bearer's clause" appears in a more private commercial context. In all these cases payment "to the bearer of his tablet" will take place "in the harbour where he is seen/met" (*ina kār innammaru*). This is a stipulation meant not for local debts or credit, but for interlocal and long-distance trade, where creditor/investor and debtor/agent are supposed to meet in the *kārum*, that is the harbour or commercial district of a Mesopotamian town, where debts could be easily paid or balanced. Since traders travel, the place of meeting is not predictable and no city is mentioned by name. This stipulation is also attested in a number of Old Babylonian commercial partnership contracts from Susa.<sup>64</sup>) These occurrences show that the "tablet bearer clause" is well suited to the demands of the trade and its combination with the clause about payment in the *kārum* supports the assumption of a possible transfer and cession of debts by means of "bearer's tablets."

This commercial context of the "tablet bearer's clause," however, is not a new Old Babylonian development. There are some Old Assyrian precursors, though less explicit, because they do not mention the commercial district (*kārum*) as place of meeting and payment. But this may be due to the fact that the Assyrian commercial presence in Anatolia by nature was concentrated in *kāruns* which hence need not be mentioned. Old Assyrian bonds occasionally did prescribe the place of payment of debts, presumably because the costs of transport within the wide-ranging network in Anatolia could be substantial. *EL* no. 94 stipulates that a copper loan has to be paid "in Kanish full and complete, without (consideration of) its transport fee." Even more expensive was transport to Assur, while at the same time the exchange value of silver there was much higher than in Anatolia. Hence statements such as "the silver is

63) See for the evidence Charpin 1982, p. 32.

64) *MDP* 22 no. 122; 23 nos. 271 and 274. There are also some records of commercial loans to be paid "in the *kārum* where he turns up," but without the "tablet bearer clause," e.g. the partnership contract HSM 7601 (edited by Dole 1965).

bound (i.e. has to be paid by contract) in the City (of Assur)” (CCTMMA no. 93a:5f.) and “he will pay you 1 mina (of silver) per year without any deduction (*šalmum*, ‘complete’), in the City” (a verdict quoted in the letter KUG 48:24ff.; cf. ATHE 64:34f.). There were even official regulations prescribing the place of payment: “Don’t you know the regulation (*awātum*) of the City: Items of Anatolia (lit. ‘the countryside’) shall only be collected in Anatolia, items of the City only in the City!”<sup>65</sup>)

In a society of travelling traders payment is only possible where and when creditor and debtor meet. Old Assyrian records, just like the Old Babylonian clause on meeting in the *kārum*, express this notion by means of the verb *amārum*, “to see.” We find both the basic stem, “to see, to spot (the debtor),” e.g. in TC 3, 219:12ff.: “Wherever I see him I will collect my silver” (cf. TC 3, 248:16f.), and the passive or reflexive N-stem, “to be seen, to meet,” e.g. in EL no. 85:4f. “Where they (creditor and debtor) meet he (the debtor) will pay.” As mentioned before, the actual place of payment is rarely mentioned, but ATHE 34:19ff. is an exception: “Seize him (the debtor, who has just arrived in Kanish), make him pay, and if he does not turn up (lit. ‘is seen’) on the market. . . .” Within the city or the (large) *kārum*, the market apparently was the place where people could be met or spotted.<sup>66</sup>) The real precursors of the Old Babylonian clause are in two Old Assyrian bonds which combine the “tablet bearer’s clause” with a stipulation about the possible place of meeting and payment:

- 1) EL no. 35:18ff.: “Wherever he (*tamkārum*) brings him his bond he will pay”;<sup>67</sup>)
- 2) Kt 91/k 203:15ff. (a witnessed bond of a debt of 1 mina of silver owed to *tamkārum* and payable within five years): “where they turn up, the bearer of the (this) tablet is the *tamkārum*.”<sup>68</sup>)

Both cases envisage a meeting of the debtor and a person identified as creditor because he is carrying the bond, who may not be identical to the original creditor. Transferring a claim of a modest, long term commercial loan (text 2) must have been an attractive possibility, to which the debtor had to agree by signing this contract.

None of the clauses we are discussing is attested in records from the Ur III period (roughly the 21st century B.C.) and the first Old Babylonian occurrences

65) Veenhof 1995b, p. 1726.

66) And where a legal fight might start (KUG 14:2: “A. and B. seized each other on the market . . .”).

67) EL no. 35:18ff.: *ali tuppūšu ubbaluṣunni kaspam išaqqal*.

68) Kt 91/l 203:15ff. *ali i-na-mu-ru-ū wābi[l] šuppim šut tamkārum* (the writing of the verb with long final -ū indicates a plural).

of the "tablet bearer's clause" are from the beginning of the 18th century B.C., that is more than hundred years later than the hey-day of Old Assyrian trade. This strongly suggests that both this clause and bonds of debts owed to *tam-kārum* were first introduced by the Old Assyrian traders as creative answers to practical demands of their commerce.<sup>69)</sup> Whatever their full implications—a "bearer's cheque" only in particular situations or on a wider scale—it was an important "first" or "modernity" in economic history.

Edzard, commenting on their appearance in Old Babylonian records wrote: "Auf jeden Fall bedeutete das Anwachsen der Zahl von Urkunden mit der Klausel *ana nāši kanikišu* zweifellos einen grossen Fortschritt im Zahlungsverkehr. . . . Hier handelt es sich womöglich um eine geniale Erfindung der Hammurabi-Zeit."<sup>70)</sup> The evidence presented here shows that in reality the Old Assyrians deserve this admiration. Their constant drive for silver, the need to reduce the problems and delays caused by size of the commercial network, and the important role played by accounting and book transfer offer an acceptable, almost natural explanation for the introduction of such a device. A trade where silver came to play a very monetary role, which first coined the expression "to make money (silver)," and whose goal it was "to convert merchandise (again) into silver," must have been a fruitful environment for developing new commercial procedures. Allowing the creditor or owner of a bond to transfer, balance or convert his claims where and when that was most suitable was a welcome device for (to quote an Old Assyrian idiom) "letting a tablet die, so that the silver comes to life." Frozen assets could be converted into vital silver, the catalyst of this early overland trade.<sup>71)</sup>

The procedure and terminology indeed have a "modern" ring. It was the beginning of a development which, with notable interruptions, would culminate in Mesopotamia during the Neo-Babylonian period (6th-5th centuries B.C.) when, to quote J. Renger, "Schuldscheine Dritter—wir würden heute von Wechsel sprechen—im Geschäftsverkehr an Zahlungs statt angenommen würden."<sup>72)</sup> But the Neo-Babylonian practice looks too innovative and "modern" when, as

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69) The only differences are that Old Assyrian always has *ṭuppum*, "tablet" and uses the verb *wabālum*, "to bring, bear," while Old Babylonian rather soon switched to *kanikum*, "sealed record," and used the verb *našûm*, "to carry" (and note the Assyrian variant which uses the verb *ka'ulum*, "to hold, to have in possession," quoted in note 57). The difference between the verbs is a purely dialectical one (also observable in the clause in deeds of adoption which stipulates that the adoptive child has "to support, care for" its new parents, where both verbs are used in the iterative Gtn-stem). *Wabālum* is well attested in Old Assyrian for "bringing a tablet" from one place to the other; once (KTS 16:20) *wābil ṭuppim* refers to a messenger bringing a letter.

70) Edzard 1970, p. 73.

71) See Veenhof 1987, pp. 44ff. and 50ff.

72) Renger 1995, p. 302.

happens in Renger's presentation, both its Old Assyrian and Old Babylonian forerunners or rather beginnings are ignored.

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- AMMY *Anadolu Medinietleri Müzesi Yelliği* (Ankara).
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